

**THIS DECISION HAS BEEN APPEALED. THE
FOLLOWING IS THE RELATED SOAH DECISION NUMBER:**

SOAH DOCKET NO. 453-04-4399.M5

MDR Tracking Number: M5-04-0343-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution- General, 133.307 titled Medical Dispute Resolution of a Medical Fee Dispute, and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. This dispute was received on 10-2-03.

The IRO reviewed office visits, massage, mechanical traction, joint mobilization, myofascial release, diathermy, required reports, ROM, therapeutic exercises and group exercises, physical performance (97750-MT), supplies, and electrical stimulation from 10-3-02 through 4-9-03.

The Medical Review Division has reviewed the IRO decision and determined that the **requestor prevailed** on the issues of medical necessity. Therefore, upon receipt of this Order and in accordance with §133.308(r)(9), the Commission hereby orders the respondent and non-prevailing party to **refund the requestor \$460.00** for the paid IRO fee. For the purposes of determining compliance with the order, the Commission will add 20-days to the date the order was deemed received as outlined on page one of this order.

On this basis, and pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay the unpaid medical fees in accordance with the fair and reasonable rate as set forth in Commission Rule 133.1(a)(8) plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this order. This Order is applicable to dates of service 10-3-02 through 4-9-03 in this dispute.

The respondent is prohibited from asserting additional denial reasons relative to this Decision upon issuing payment to the requestor in accordance with this Order (Rule 133.307(j)(2)).

The above Findings and Decision are hereby issued this 27th day of February 2004.

Dee Z. Torres
Medical Dispute Resolution Officer
Medical Review Division

ORDER

Pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay for the unpaid medical fees in accordance with the fair and reasonable rate as set forth in Commission Rule 133.1(a)(8) plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this order. This Order is applicable for dates of service 10-3-02 through 4-9-03 in this dispute.

This Order is hereby issued this 27th day of February 2004.

Roy Lewis, Supervisor
Medical Dispute Resolution
Medical Review Division

November 25, 2003

David Martinez
TWCC Medical Dispute Resolution
4000 IH 35 South, MS 48
Austin, TX 78704

MDR Tracking #: M5-04-0343-01
IRO #: 5251

___ has been certified by the Texas Department of Insurance as an Independent Review Organization. The Texas Worker's Compensation Commission has assigned this case to ___ for independent review in accordance with TWCC Rule 133.308 which allows for medical dispute resolution by an IRO.

___ has performed an independent review of the care rendered to determine if the adverse determination was appropriate. In performing this review, all relevant medical records and documentation utilized to make the adverse determination, along with any documentation and written information submitted, was reviewed.

The independent review was performed by a matched peer with the treating doctor. This case was reviewed by a licensed Doctor of Chiropractic. The reviewer is on the TWCC Approved Doctor List (ADL). The ___ health care professional has signed a certification statement stating that no known conflicts of interest exist between the reviewer and any of the treating doctors or providers or any of the doctors or providers who reviewed the case for a determination prior to the referral to ___ for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

CLINICAL HISTORY

The emergency room records denote that ___ sustained a direct blow from a bicycle falling from a ceiling rack. There are complaints of right hip pain and right leg pain radiating through the buttocks. The pain had decreased by the time of her presentation at the emergency room. She was essentially diagnosed with a hematoma of the right leg/contusion, treated and released. The patient was seen soon after the date of injury by ___. By this time, the patient had complaints of burning pain in the right side of her low back and right hip. She also reported a dull aching in her neck and the right side of her upper back. She also reported pain in the right side of her groin area with soreness in the posterior aspect of the right leg with walking. ___ account of the injury at that time was that the patient was working in the toy department, was slightly bent forward and reported that a bicycle struck her in the right side of her lower back and buttocks. She also stated that boxes of toys fell on her head and right upper back. She was initially taken to the manager and filled out an injury report. A coworker took her to ___ in ___. She was evaluated by ___ and

was given a diagnostic impression of a grade II lumbar sprain/strain, cervical joint instability, right hip sprain/strain grade II right rotator cuff sprain/strain and spasm of muscle. Conservative chiropractic care was initiated that consisted of physical medical treatments including both passive and active therapy, and eventually an in-home therapy program was provided.

Treatment frequency appears to have thinned out around the middle of 2002. In some cases, this patient only had one to approximately four treatments within a month's time frame.

This represents one year, fifty weeks and two days of continuous care. The patient did undergo an operative procedure on March 1, 2002 that consisted of (1) manipulation under anesthesia and arthroscopic examination of the glenohumeral compartment and subacromial compartment with subacromial decompression done arthroscopically, and (2) open repair of chronic rotator cuff tear through deltoid splinting approach requiring the suture anchors, bioheaded cork screws, and restore graft. There were no preexisting or prior similar conditions noted within the past history of this 51-year-old female stocker for ____.

DISPUTED SERVICES

Under dispute is the medical necessity of office visits, massage therapy, mechanical traction joint mobilization, myofascial release, diathermy treatment, special reports, range of motion measurements, physical performance, group therapy procedures, therapeutic exercises, special supplies and electrical stimulation from 10/3/02 through 4/9/03.

DECISION

The reviewer disagrees with the prior adverse determination.

BASIS FOR THE DECISION

The reviewer's decision as to the medical necessity in this particular case is viewed in light of Section 408.021 of the Texas Labor Code (entitlement to medical benefits) which states that: (a) an employee who sustains a compensable injury is entitled to all healthcare reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to healthcare that:

1. cures or relieves the effects naturally resulting from the compensable injury;
2. promotes recovery; or
3. enhances the ability of the employee to return to or retain employment.

The date of injury on this case is _____. The dates in dispute do not start until almost a year post-injury and represent 27 weeks of care that are in dispute. The patient underwent an operative procedure on March 1, 2002 that consisted of (1) manipulation under anesthesia and arthroscopic examination of the glenohumeral compartment and subacromial compartment with subacromial decompression done arthroscopically, and (2) open repair of chronic rotator cuff tear through deltoid splinting approach requiring the suture anchors, bioheaded cork screws, and restore graft. She obviously convalesced post-surgically from this and then underwent some passive and active care under the auspices of _____, _____ and _____. They next turned their attention to the patient's neck, lower back and hip conditions and appeared to be merely monitoring the patient's condition

from October 3, 2002 to November 6, 2002, to December 3, 2002, while the patient underwent certain diagnostic procedures and other consults with reference to the injuries of these areas.

On November 21, 2002, ___ felt that this patient possibly needed to undergo spine surgery and he recommended that she return and speak with ___ whose impression at that time was that the patient had a grade I spondylolisthesis at L4/5 and back pain. He noted that she had not had any steroid injections at that point, and that she also complained mainly of mechanical back pain, with no leg symptomatology. With that, he felt that some facet injections were in order. He did not feel, at that time, that ___ was a candidate for any type of fusion procedure.

The next follow-up with ___ was on May 8, 2003. He felt that she has discogenic back pain at L3 through S1, primarily based on a discogram they had done back in August of 2002. He denoted that the patient had disc herniations at L4/5 and L5/S1, discogenic-confirmed concordant discogenic pain at those levels. This patient had failed conservative treatment and at that point he thought her options were either to live with chronic pain or proceed with a lumbar fusion. ___ then recommended that she return to ___ and himself in a pre-operative office visit, presumably, if she decided to undergo a surgical procedure.

By ___ assessment, "she has failed conservative treatment," at the time of his report, which was May 8, 2003, and this would leave one to believe that all prior treatment was for naught and therefore medically unnecessary. This is incorrect as an assumption because the attempt is appropriate. It appears that the office visits of October 3, November 6 and December 3, 2002 were for mere follow-up and monitoring of the patient's condition. There was another follow-up visit on December 18, 2002, mid-month, strictly for range-of-motion and muscle testing. The next follow-up was not until December 18, 2002, mid-month, strictly for range-of-motion and muscle testing. The next follow-up was not until January 14, 2003 and then February 3, 2003. This was to start the patient back in a daily active rehabilitation program in preparation for a facet injection on February 6, 2003 by ___. The patient received both passive and active care for a little over nine weeks for one facet injection and was then released to an as-needed basis.

The initial care prior to the date of the injection was appropriate as follow-up in monitoring the patient's condition during an investigative and monitoring period in determining appropriate treatment direction. While this cured nothing, it did relieve, albeit temporarily, the patient's condition and therefore, aids in promoting recovery, all in an attempt to enhance the ability of the patient to return to or retain employment. Based on the documentation past the point of the injection when the patient was undergoing the passive and active care, the documentation supports functional increase that allowed the patient to return to a limited type of work on February 27, 2003, with a projected return to full-time work on May 25, 2003, and a projected MMI date of June 8, 2003. ___ did state that since December 18, 2002, the patient began with a pain scale of 5 out of 10. He related her pain scale on April 1, 2003, close to her release to p.r.n., still at a 5 out of 10. This obviously showed no real appreciable change in her subjective pain perception. This is further supported by very little variance in her visual analog scale during this period, which only fluctuated from 4 to 6 on subsequent visits, plus her neck disability score seemed to never fluctuate from 42% to 52%, and only one time dipped down to 32%.

The methods used did produce benefit. The healthcare was reasonable based on the nature of the injury. ___ did show some relief of the effects of the injury, obviously more functional than symptomatic. The treatment did promote recovery which did eventually return this patient to employment.

Physical performance testing is appropriate to determine outcomes, progress and any outlying deficiencies that need to be addressed during a treatment plan. Specific range of motion testing and muscle testing are generally not unbundled from follow-up evaluations, however, these were evidently performed on separate dates and were the only things that were performed on those dates, demonstrating them as being definably separate from other evaluations.

On the surface, one reviewing this case quickly and not in its entirety may presume that the patient was not achieving any benefit because of the lack of subjective progress. On close inspection, however,

one will denote functional gains that are obviously separate and distinct from subjective or perceived benefit. The question therefore, is not whether the patient derived any benefit from the treatment plan. The question and disagreement come from how the benefit was achieved. If one based their opinion purely on the road in which he took to treat this patient, then one will find that it does not appear to fall in line with the most contemporary treatment guidelines because they all downplayed the effectiveness and efficiency of passive care.

Using the framework of Section 408.021 of the Texas Labor Code, it is not concerned with how the outcome is produced, only that an outcome is produced. This case did produce a favorable outcome and, therefore, the care provided to ___ was medically necessary.

___ has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. ___ has made no determinations regarding benefits available under the injured employee's policy

As an officer of ___, I certify that there is no known conflict between the reviewer, ___ and/or any officer/employee of the IRO with any person or entity that is a party to the dispute.

___ is forwarding this finding by US Postal Service to the TWCC.

Sincerely,